IN THE SUPREME COURT OF GUAM

JESSE J. ROJAS,
Plaintiff-Appellee,

vs.

GERALDINE C. ROJAS,
Defendant-Appellant.

OPINION

Filed: October 31, 2007

Cite as: 2007 Guam 13

Supreme Court Case No.: CVA06-002
Superior Court Case No.: DM0755-01

Appeal from the Superior Court of Guam
Argued October 11, 2006 and submitted on April 6, 2007
Hagåtña, Guam

Appearing for Defendant-Appellant:
Jeffrey A. Cook, *Esq.*
Cunliffe and Cook
210 Archbishop Flores Street
Hagåtña, Guam 96910

Appearing for Plaintiff-Appellee:
Michael F. Phillips, *Esq.*
Phillips and Bordallo, P.C.
410 West O'Brien Drive
Hagåtña, GU 96910

BEFORE: F. PHILIP CARBULLIDO, Chief Justice; ROBERT J. TORRES, JR., Associate Justice; ALEXANDRO C. CASTRO, Justice *Pro Tempore*.

TORRES, A.J.:

[1] Defendant-Appellant, Geraldine C. Rojas, appeals both the Superior Court's November 8, 2004 decision and order granting interlocutory partial summary judgment (hereinafter, "Order Granting Partial Summary Judgment") for Plaintiff-Appellee, Jesse J. Rojas, and the February 21, 2006 order denying her motion for reconsideration of this partial summary judgment order (hereinafter, "Order Denying Reconsideration").

[2] Jesse Rojas did not initially challenge this court's jurisdiction to hear this appeal, but the Court raised the issue, *sua sponte*, and ordered additional briefing. This case presents the unusual circumstance where a pending motion to reconsider an interlocutory partial summary judgment order was not ruled upon by the Superior Court until more than thirty days after entry of a final judgment in the case. We must decide whether the pending motion for reconsideration of the interlocutory order that was solely appealable through discretionary appeal tolled the time for appeal beyond the standard thirty days after the entry of final judgment. As explained below, we hold that the pending motion to reconsider did not toll the time for appeal beyond the expiration of the time for appealing the final judgment, and we, therefore, dismiss the appeal for lack of jurisdiction.

I.

[3] In 2001, Jesse Rojas ("Jesse") filed for divorce and Geraldine Rojas ("Geraldine") filed her Answer. Jesse filed a motion for partial summary judgment in 2004. Jesse's motion for partial summary judgment requested the Superior Court to determine that Geraldine "as a matter of law . . . is not entitled to Plaintiff's [Government of Guam] Retirement Benefits" based on 4

GCA § 8166, because they were not married for at least ten years.[1] Appellee's Supplemental Excerpts of Record ("SER"), p. 30 (Pl.'s Mot. for Summ. J.). The Superior Court granted the motion on November 8, 2004.[2] Geraldine filed and served a Motion for Reconsideration of the Superior Court's Order Granting Partial Summary Judgment on November 22, 2004.

[4] On February 3, 2005, while the motion for reconsideration was pending, the Superior Court signed the Final Judgment and Decree for Divorce in the case, granting a final judgment of divorce and incorporating the terms of the Interlocutory Decree of Divorce which stated that Jesse would keep all of his Government of Guam retirement benefits. Both the Interlocutory Decree of Divorce and the Final Judgment and Decree for Divorce were entered on the docket on February 4, 2005, and the Notice of Entry on the Docket was also provided on that day. Over a year after the entry of final judgment in the case, the Superior Court denied Geraldine's motion for reconsideration on February 21, 2006. Geraldine received notice of the Order Denying Reconsideration on February 23, 2006 and filed her Notice of Appeal on March 23, 2006. After oral argument was heard in accordance with Rule 19 of the Guam Rules of Appellate Procedure ("GRAP"), the Court ordered each party to file an additional brief on "[w]hat affect did the Final Decree have on this Court's jurisdiction to hear this matter." *Rojas v. Rojas*, CVA06-002 (Order, Mar. 16, 2007).

//

//

[1] Interestingly, at the time the summary judgment motion was filed more than 10 years had passed since the parties were married in June 1993. However, this issue was not raised in the trial court and we do not address it here. Similarly, we do not reach the merits of the meaning and application of 4 GCA § 8166, because this appeal is dismissed for lack of jurisdiction.

[2] Geraldine did not file an opposition to the Motion for Summary Judgment.

II.

[5] Jurisdictional issues may be raised by any party at any time or *sua sponte* by the court. *People v. Angoco*, 2006 Guam 18 ¶ 7. The timeliness of an appeal is jurisdictional, and this court cannot obtain jurisdiction if a timely notice of appeal is not filed. *Gill v. Siegel*, 2000 Guam 10 ¶ 5.

III.

[6] Notices of appeal from a final order must be filed within the time period set by GRAP Rule 4, and, unless a motion for extension of time is filed in the Superior Court, GRAP Rule 4(a)(1) requires the notice of appeal to be filed within thirty days after the judgment or order appealed from is entered. Guam R. App. P. Rule 4(a). No motion for extension of time was filed in this case, and Geraldine filed her notice of appeal over thirteen months after entry of the final order. When a party seeks reconsideration of a final judgment pursuant to Rule 59 of the Guam Rules of Civil Procedure ("GRCP"), the time to file a notice of appeal is tolled. GRAP Rule 4(a)(4)(A)(iv). Here, however, Geraldine sought reconsideration of an interlocutory order, not a final judgment.

[7] In order to rule on our jurisdiction in this appeal, we examine two questions: first, whether Geraldine's motion to reconsider provided any tolling effect on the time to appeal the underlying interlocutory order; and, second, whether her pending motion could toll the time for appeal beyond the expiration of the time for appealing the intervening final judgment. These questions regarding tolling arise because we are not dealing with a motion to reconsider a final judgment that tolls the time for appeal. The time for appealing the Superior Court's February 3, 2005 Final Judgment and Decree of Divorce had long since expired before Geraldine filed her

March 23, 2006 Notice of Appeal for this appeal. Geraldine has not filed a notice of appeal regarding the Final Decree of Divorce.

[8] Geraldine is appealing only the Order Granting Partial Summary Judgment and the Order Denying Reconsideration, not the final judgment. In her Notice of Appeal, Geraldine stated that "notice of appeal is hereby given of the Decision and Order rendered . . . on February 21, 2006, denying Defendant's Motion for Reconsideration of the Order Granting Partial Summary Judgment, and the Order Granting Partial Summary Judgment filed November 8, 2004, and entered on the docket November 8, 2004." Appellant's Notice of Appeal (Mar. 23, 2006).

[9] Whether or not Geraldine's motion to reconsider had a tolling effect depends on the characteristics of the underlying Superior Court order and the avenues for appealing that order. The Order Granting Partial Summary Judgment was assuredly an interlocutory order.[3] Furthermore, the Order Granting Partial Summary Judgment does not direct entry of final judgment or make any determination that there is no just reason for delay. Therefore, GRCP Rule 54(b) is not implicated in a manner that could allow this order to be considered a certified final judgment. *See* Guam R. Civ. P. 54(b); *Abalos v. Cyfred Ltd.*, 2006 Guam 7 ¶ 59; *De Vera v. Chen*, 2006 Guam 1 ¶ 12. The avenues for appealing an interlocutory order under Guam law are limited, *see People v. Angoco*, 2006 Guam 18 ¶ 14, and no appeal of right was available from the Order Granting Partial Summary Judgment. *See* 7 GCA §§ 3108, 25102 (2005).

[10] Geraldine is attempting to use an appeal of a denial of a GRCP Rule 59(e) motion to alter or amend the Order Granting Partial Summary Judgment in order to gain a tolling effect and, in

[3] "A partial summary judgment differs from a complete summary judgment in that it cannot end a proceeding and is therefore interlocutory." 73 Am. Jur. 2d Summary Judgment § 63 (Westlaw through July 2007).

turn, modify the final judgment.[4] By placing her motion to reconsider under Rule 59(e) and couching her appeal as an appeal of the Superior Court's Order Granting Partial Summary Judgment and the Order Denying Reconsideration, Geraldine is seeking to place the time for appeal of these rulings under the ambit of GRAP Rule 4(a)(4)(A) which suspends the running of the time for filing a notice of appeal until the Superior Court grants or denies a motion "to alter or amend judgment under Rule 59." GRAP Rule 4(a)(4)(A)(iv).[5] Through this appeal, Geraldine urges this Court to reverse the Superior Court's interlocutory Order Granting Partial Summary Judgment and remand the matter for entry of a judgment "granting Geraldine her percentage interest in Jesse's Government of Guam Retirement Fund interest based on months of marriage over months of service divided by two . . . ." Appellant's Opening Brief, p. 22 (July 19, 2006).

[11] Our first question involves an examination of whether Geraldine's motion to reconsider actually tolled the time for appealing the Order Granting Partial Summary Judgment. In order to

[4] Geraldine stated:

> Rule 59 of the Guam Rules of Civil Procedure at subsection (e) provides: "a motion to alter or amend the judgment shall be served not later than ten days after entry of the judgment." Defendant . . . hereby moves pursuant to said rule for the court to reconsider and deny the Order Granting Partial Summary Judgment entered November 8, 2004 . . . ."

Appellee's SER, p. 36 (Notice of Mot. and Mot. for Recons.).

[5] During the pendency of this case, the Guam Rules of Appellate Procedure were amended. We stated:

> [The new GRAP] shall apply to all actions, cases and proceedings brought after the instant Promulgation Order takes effect and to all actions, cases and proceedings commenced prior to the effective date hereof and still pending, except to the extent that the application of the Rules to those pending actions, cases and proceedings would not be feasible, or would work injustice, in which event the prior valid Guam Rules of Appellate Procedure shall apply.

Re: Adoption of the Guam Rules of Appellate Procedure, PRM07-003 (Promulgation Order No. 07-003-1, Feb. 21, 2007). We will apply the new amended GRAP Rules throughout this opinion except that we will not apply new GRAP Rule 4.2 to this case. GRAP Rule 4.2, like Rule 5 of the Federal Rules of Appellate Procedure, requires a party to file a petition for permission to appeal instead of a notice of appeal in order to perfect a discretionary interlocutory appeal. The GRAP in effect at the time of Geraldine's appeal did not require a party to file a petition. Therefore, we will not apply new GRAP Rule 4.2 because applying that rule would not be feasible.

answer that question, we would need to decide whether a motion for reconsideration of an interlocutory order that was appealable solely under 7 GCA § 3108(b) had any tolling effect on the time for appeal. Jesse argues that Geraldine's motion to reconsider the Order Granting Partial Summary Judgment had no tolling effect. The validity of Jesse's argument would likely depend on how a "judgment" is defined under Rule 59(e) and whether motions to reconsider interlocutory orders that are appealable only through discretionary appeal toll the time for appeal even without resorting to GRCP Rule 59 and GRAP Rule 4(a)(4)(A).[6] However, we need not determine the validity of Jesse's argument. Even assuming *arguendo* that Geraldine's motion to reconsider initially tolled the time for appealing the Order Granting Partial Summary Judgment, we still must determine whether her motion tolled the time for appeal beyond the expiration of the time to appeal the final judgment. We, therefore, decline to answer our first question. Instead, we will focus on our second question of whether Geraldine's motion to reconsider the order that was solely appealable under 7 GCA § 3108(b) could toll the time for appeal beyond the expiration of the time for appealing the final judgment.

[12] The United States Court of Appeals for the Ninth Circuit has expressed its policy of promoting the finality of judgments. *Lindauer v. Rogers*, 91 F.3d 1355, 1357 (9th Cir. 1996). Furthermore, courts try to avoid rulings that are "contrary to the philosophy favoring finality of judgments and the expeditious termination of litigation." *Nat'l Petrochemical Co. of Iran v. M/T Stolt Sheaf*, 930 F.2d 240, 245 (2d Cir. 1991) (quoting 6 Charles Alan Wright & Arthur R.

[6] Federal courts have looked to Rule 54 of the Federal Rules Civil Procedure ("FRCP") to define "judgment" under Rule 59(e). *E.g. Marie v. Allied Home Mortgage Corp.*, 402 F.3d 1, 7 (1st Cir. 2005); *Lichtenberg v. Besicorp Group Inc.*, 204 F.3d 397, 400 (2d Cir. 2000). Two federal circuit courts of appeals have determined in a discretionary appeal situation under FRCP Rule 23(f) that, though interlocutory rulings of class action certification were not "judgments" covered by FRCP Rule 59 that invoke tolling under Rule 4(a), a motion to reconsider a class action certification tolled the time for filing the petition for appeal if the motion was made within the time for appeal. *Shin v. Cobb County Bd. of Education*, 248 F.3d 1061, 1063-65 (11th Cir. 2001); *Blair v. Equifax Check Services, Inc.*, 181 F.3d 832, 837 (7th Cir. 1999).

Miller, Federal Practice and Procedure § 1489, at 694 (1990)); *accord The Tool Box, Inc. v. Ogden City Corp.*, 419 F.3d 1084, 1087-88 (10th Cir. 2005). Allowing Geraldine's motion to reconsider to toll the time for appeal beyond the expiration of the time for appealing the final judgment would be contrary to the philosophy favoring finality of judgments and the expeditious termination of litigation.

[13] Moreover, with 7 GCA § 3108(a), our Legislature incorporated the final judgment rule into Guam law, *Angoco,* 2006 Guam 18 ¶ 10. The final judgment rule mandates that a party must ordinarily raise all claims of error in a single appeal following final judgment on the merits. *Id*. "Generally limiting appellate review to final judgments reduces an appellate court's interference with a trial judge's pre-judgment decisions, minimizes a party's ability to harass opponents through multiple appeals, and promotes the efficient administration of justice." *Id.* ¶ 11. By enacting section 3108(b), the Legislature created a limited discretionary appeal route under 7 GCA § 3108(b), which provides an exception to the final judgment rule.[7] *See People v. Quenga*, 1997 Guam 6 ¶ 4. As explained below, the separate routes for appeal under section 3108 (a) and (b) become mutually exclusive when a party fails to pursue the interlocutory appeal

[7] Title 7 GCA § 3108 states:

> (a) Final Judgment. Appellate review to the Supreme Court shall be available only upon the rendition of final judgment in the Superior Court from which appeal or application for review is taken.
>
> (b) *Interlocutory review*. Orders other than final judgments shall be available to immediate appellate review as provided by law and in other cases only at the discretion of the Supreme Court where it determines that resolution of the questions of law on which the order is based will:
>
> (1) Materially advance the termination of the litigation or clarify further proceedings therein;
>
> (2) Protect a party from substantial and irreparable injury; or
>
> (3) Clarify issues of general importance in the administration of justice.

7 GCA § 3108(a)-(b) (2005) (emphasis added).

of an interlocutory order that was solely appealable under section 3108(b) prior to the expiration of time for appealing the final judgment in the case.

[14] In *Gutierrez v. Charfauros,* 2002 Guam 7, we determined that "[t]he granting of a partial summary judgment is reviewable after the final judgment is entered." *Id.* ¶ 10. Our explanation for this was that "because summary judgment on less than the entire litigation is not appealable as of right, Title 7 GCA § 3108(b) (1994), and thus 'the order was merged into the final judgment and is open to review on appeal from that judgment.'" *Id.* (quoting *Aaro, Inc. v. Daewoo Int'l Corp*., 755 F.2d 1398, 1400 (11th Cir. 1985)).

[15] With the advent of the final judgment in this case, an appeal under section 3108(a) would have been available for both the final judgment and the Order Granting Partial Summary Judgment that automatically merged into the final judgment. These section 3108(a) appeals were not tolled by the pending motion to reconsider the Order Granting Partial Summary Judgment, because our interest in finality prevents this determination. Though appeal under section 3108(a) was available, discretionary appeal under section 3108(b) was no longer available for the Order Granting Partial Summary Judgment, because that order was, in accordance with *Gutierrez v. Charfauros*, merged into the final judgment. Due to this merger, no "interlocutory review," 7 GCA 3108(b), remained possible after expiration of the time to appeal the final judgment. If a party fails to pursue interlocutory appeal under section 3108(b) of a merged interlocutory partial summary judgment prior to the expiration of the time to appeal the final judgment, then they forfeit their interlocutory discretionary appeal. The interlocutory Order Granting Partial Summary Judgment merged into the final judgment, and the Order Denying Reconsideration was left without a route for appeal or any effect on the final judgment.

[16] A contrary result was reached in the only case cited by Geraldine that involved a situation where the trial court ruled on a motion to modify an interlocutory matter after entry of the final judgment. *Director of Revenue, State of Colorado v. United States*, 392 F.2d 307, 308-10 (10th Cir. 1968), *abrogated by United States v. Kimbell Foods*, 440 U.S. 715 (1979). In *Director of Revenue*, the appellate court considered a case where the notice of appeal could not be timely unless measured from the date of the post-final-judgment denial of a motion for rehearing on an interlocutory summary judgment order where the motion regarding the interlocutory order was filed prior to entry of the final judgment. *Id*. at 308. The Tenth Circuit determined that the trial court had the power to consider a motion regarding an interlocutory matter after entry of the final judgment, *id.* at 310, and that they had jurisdiction to hear the appeal. *Id.* at 308. The court made this determination by concluding that the un-ruled-upon motion for rehearing or for new trial regarding an interlocutory matter actually worked as a timely filed motion regarding the final judgment. *Id.* at 310.

[17] We decline to follow the rule espoused in *Director of Revenue*, because our interest in promoting finality prevents us from extending this rule to our jurisdiction. Were we to apply the rule, lurking motions to reconsider interlocutory matters that were solely appealable through discretionary appeal could possibly threaten the finality of cases that were long ago deemed final. In light of this distinct pitfall, we support the philosophy favoring finality of judgments and the expeditious termination of litigation by rejecting the rule from *Director of Revenue*.

[18] In the interest of promoting finality and due to 7 GCA § 3108 (a) and (b), we determine that Geraldine's motion to reconsider did not toll the time for appeal beyond the expiration of the time for appealing the final judgment. Discretionary appeal of the motion to reconsider and its

underlying interlocutory partial summary judgment was no longer available after entry of the final judgment and the expiration of the time to appeal the final judgment.

[19] This case does not involve a situation where a court announces a final decision or announces that it will certify a partial summary judgment to be final under Rule 54(b) and a party moves the court to reconsider that final decision prior to the actual entry of the final judgment or order appealable as of right. The federal circuits have taken divergent views on this situation, and we express no opinion on it at this time.[8] This case, also, does not involve an interlocutory order or judgment from which appeals are available outside of discretionary appeal under 7 GCA § 3108(b), and we, therefore, do not address that situation with this opinion. Furthermore, this case does not entail a situation where a party appeals the superior court's ruling on a motion to reconsider an interlocutory order within the time for appeal of the final judgment. Rather, in this case, we confront a pending motion to reconsider an interlocutory partial summary judgment order that was solely appealable through 7 GCA § 3108(b) where the motion to reconsider the underlying interlocutory order was not disposed of by the Superior Court until

[8] Some Federal Circuit Courts of Appeals have determined that the final order or judgment effectively denies the pending motion. *Dunn v. Truck World, Inc.*, 929 F.2d 311, 313 (7th Cir. 1991) ("Final judgment necessarily denies pending motions, and so starts the time for appeal."); *Cohen v. Curtis Publ'g Co.*, 333 F.2d 974, 977 (8th Cir. 1964) (ruling that the final judgment "was an effective denial of plaintiff's motion . . . so that the 30-day period within which to file the notice of appeal commenced on [the date of the final judgment]"); *Mosier v. Fed. Reserve Bank of N.Y.*, 132 F.2d 710, 712 (2nd Cir. 1942) ("'The determination of a motion is not always express, but may be implied. Thus the entry of an order inconsistent with granting the relief sought is a denial of the motion. So, also, the entry of final judgment in a cause is in effect an overruling of all motions pending prior thereto in the case.'" (quoting 42 Corpus Juris 511)). However, other Federal Circuits have disagreed. *Havird Oil Co. v. Marathon Oil Co.*, 149 F.3d 283, 289 (4th Cir. 1998) (rejecting the Seventh Circuit's bright-line rule from *Dunn v. Truck World, Inc.*, and stating the Fourth Circuit's own "bright-line rule" that, "if [a trial court] intends to dispose of all outstanding Rule 4(a)(4) motions when it enters judgment, [it must] explicitly state that it is doing so and give its reasons"); *Calculators Hawaii, Inc. v. Brandt, Inc.*, 724 F.2d 1332, 1335 (9th Cir. 1983) (concluding that the court had jurisdiction to hear the appeal because the pending motion tolled the time to file the notice of appeal because the intervening final judgment did not reject the new contentions raised through the pending motion); *Partridge v. Presley*, 189 F.2d 645, 647 (D.C. Cir. 1951) (reasoning that the trial court did "not consciously dispose[] of the [pending motion] by entering the judgment on April 11; so instead of being unnecessary, as was the subsequent order in the *Mosier* case, the order of September 27 was the first and only disposition of the pending motion"); *see also* David G. Knibb, *Federal Court of Appeals Manual* § 10:6 (5th ed.) (Westlaw current through 2007 updates).

after the entry of final judgment and no appeal of any judgment or order was made prior to the expiration of the time to appeal the final judgment. Confronted with this unusual situation, and, due to the reasoning above, we do not have jurisdiction to hear this appeal.

IV.

[20] We hold that the pending motion to reconsider the Order Granting Partial Summary Judgment that was appealable only under 7 GCA § 3108(b) did not toll the time for appeal beyond the expiration of the time to appeal the final judgment in this case. Therefore, we do not have jurisdiction to hear this appeal. Accordingly, this appeal is **DISMISSED**.